

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL ACTION NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF  
AMERICA, INC. and  
FRANCESCO CIAMBRIELLO,

Defendants.

---

**PLAINTIFF HEATHER KIERNAN'S CONSOLIDATED MOTION TO COMPEL  
THE DEPOSITION OF THE KEEPER OF THE RECORDS OF  
THE HARTFORD INSURANCE COMPANY AND  
MOTION FOR SANCTIONS FOR FAILURE TO OBEY SUBPOENA**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, the Plaintiff in the above captioned matter hereby moves for an order compelling the deposition of the Keeper of the Records of the Hartford Insurance Company and for sanctions against the Hartford Insurance Company (herein referred to as "The Hartford") for willfully failing to obey a subpoena.

In support of this motion, the Plaintiff, through her counsel, respectfully represents:

1. The Hartford Insurance Company was the Defendant Armored Motor Service, Inc.,'s workers compensation carrier. The company handled the Plaintiff's workers compensation claim stemming from the same facts of which give rise to the instant litigation, namely, the sexual assault.

2. Under cover of October 13, 2004, the Plaintiff caused to be served a subpoena and Notice of Deposition, directed to the Keeper of Records for the Hartford on its agent, the Commissioner of Insurance for the Commonwealth of Massachusetts. See Exhibit A, attached hereto.<sup>1</sup> In addition to the subpoena, the undersigned attached a letter directing the Hartford to contact him to “discuss the disclosure of these documents without the need of any appearance.”
3. The subpoena was received by the Insurance Commissioner on October 15, 2004. See Exhibit B.
4. As of Friday, November 19, 2004, the undersigned did not hear a response of any kind from the Hartford.
5. On Friday, November 19, 2004, the undersigned obtained the fax number for the Hartford's legal department by calling the telephone number listed on Exhibit C. See Exhibit C. The undersigned then sent the fax cover sheet (1 page), the notice of deposition (6 pages), a copy of the subpoena (1 page), a copy of the letter to the Keeper of the Records (1 page), a copy of the letter to the Insurance Commissioner along with a copy of the receipt acknowledgment (3 pages). Upon information and belief, all pages were received by the Hartford on Friday afternoon, November 19, 2004. See Fax confirmation, Exhibit D.

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<sup>1</sup>The Commissioner of Insurance is authorized to accept service of legal process on behalf of foreign insurance companies that are licensed to do business in the Commonwealth as provided for in Chapter 175, Sections 151(3) and 154 of the Massachusetts General Laws.

6. There was no response to the letter.
7. On Friday, November 19, 2004 at approximately 2:48 pm, the undersigned spoke with Stacy Kegan at the Legal Department for the Division of Insurance for the Commonwealth. She confirmed receipt of the subpoena, and confirmed that on November 18, 2004, the subpoena was delivered to CT Corporation Systems who the Hartford has designated as their agent in the Commonwealth.
8. On Monday November, 22, 2004 the deposition as noticed was convened. No one from the Hartford appeared for the deposition, and no one notified the undersigned that the Hartford would appear. A copy of the transcript of the proceeding that took place on November 22, 2004 is attached hereto as Exhibit E.
9. As of the date of this Motion, the undersigned has not been contacted by the Hartford.
10. The Plaintiff incurred costs of \$328.00 of court reporting fees; and a \$6.00 process fee to the Division of Insurance. Upon order of the court, the undersign will submit a fee application and supporting affidavits.

WHEREFORE, for all of the foregoing reasons, the Plaintiff respectfully requests that her Motion to Compel the Deposition of the Keeper of the Records of the Hartford Insurance Company be granted, and that the Hartford be sanctioned for its willfull violation of the subpoena. Plaintiff also respectfully

requests any other relief that this Court deems equitable, just and proper.

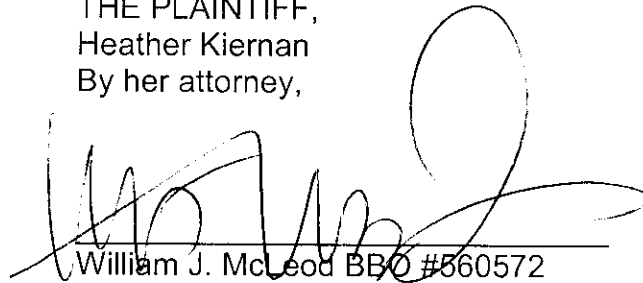
Local Rule 7.1(A)(2) Certification

The undersigned represents that he attempted in good faith to reach the Hartford to discuss compliance with the subpoena, but did not receive any response.

Respectfully submitted:

THE PLAINTIFF,  
Heather Kiernan  
By her attorney,

Dated: December 9, 2004

A large, stylized handwritten signature in black ink, appearing to read 'W. J. McLeod', is written over a horizontal line.

William J. McLeod BBO #560572  
McLeod Law Offices, PC  
77 Franklin Street  
Boston, MA 02110  
(617) 542-2956

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2004, a true and complete copy of this document was served via first class mail upon:

Robert P. Joy  
Allison K. Romantz  
Laurence Donoghue  
Morgan, Brown & Joy LLP  
One Boston Place  
Boston, MA 02108

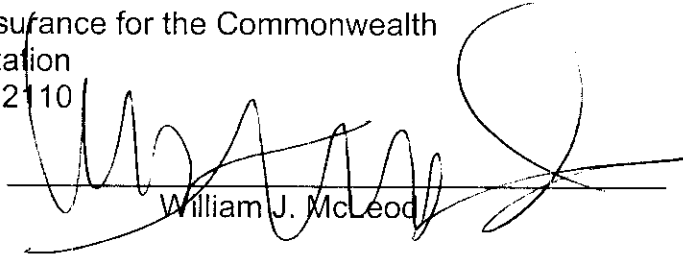
David R. Ardito  
Bisio and Dupont Building  
228 County Street  
Attleboro, MA 02703

AND:

Legal Department  
The Hartford Insurance Company  
690 Asylum Avenue  
Hartford, CT 06115

AND

Stacy Kegan  
Legal Department  
Division of Insurance for the Commonwealth  
One South Station  
Boston, MA 02110



William J. McLeod

# Exhibit A

Issued by the

## UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

leather Kiernan

v.

## SUBPOENA IN A CIVIL CASE

Armored Motor Service of America, Inc. and  
Francesco Ciambriello

CASE NUMBER:

04-10131 RBC

THE HARTFORD INSURANCE COMPANY

c/o AGENT FOR PROCESS: Commissioner of Insurance for the Commonwealth of Massachusetts  
One South Station, Boston, MA 02110YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in  
above case.

OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the  
above case.

OF DEPOSITION

DATE AND TIME

McLeod Law Offices, PC, 77 Franklin Street, Boston, MA 02110

November 22, 2004  
10:00 a.m.YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place,  
and time specified below (list documents or objects):Please see Schedule A on the Notice of Deposition which is attached hereto and incorporated  
herein as if fully set forth.

McLeod Law Offices, P.C., 77 Franklin Street, Boston, MA 02110

DATE AND TIME

November 22, 2004  
10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers,  
attorneys, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person  
designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

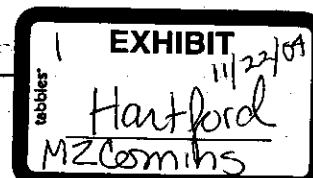
William J. McLeod, McLeod Law Offices, PC, Counsel for Plaintiff

October 13, 2004

OFFICER'S NAME, ADDRESS AND PHONE NUMBER

77 Franklin Street, Boston, MA 02110 617-542-2956

If the hearing is pending in district other than district of issuance, state district under case number.



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

 **COPY**

---

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL ACTION NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF  
AMERICA, INC. and  
FRANCESCO CIAMBRIELLO,

Defendants.

---

**NOTICE OF DEPOSITION**

|                         |                         |
|-------------------------|-------------------------|
| TO: Robert Joy          | David Ardito            |
| Alison Romantz          | Bisio & Dupont Building |
| Laurence Donoghue       | 228 County Street       |
| Morgan Brown & Joy, LLP | Attleboro, MA 02703     |
| One Boston Place        |                         |
| Boston, MA 02108        |                         |

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the Plaintiff in the above captioned matter, by and through her counsel, shall take the deposition upon oral examination of the Keeper of the Records, The Hartford Insurance Company, Hartford, CT 06104 on Monday, November 22, 2004 at 10:00 a.m. at the offices of Plaintiff's counsel, William J. McLeod, McLeod Law Offices, P.C., 77 Franklin Street, Boston, MA 02110. The deposition shall continue from day to day until completed.

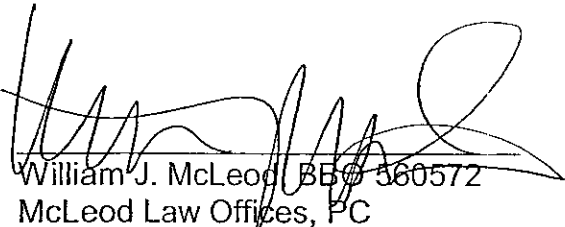
The witness is instructed to bring all documents that are listed on Schedule A, set forth herein, and to adhere to the Definitions and Instructions listed herein.



You are invited to attend and cross-examine.

THE PLAINTIFF,  
Heather Kiernan

DATED: October 13, 2004



William J. McLeod, BBA 360572  
McLeod Law Offices, PC  
77 Franklin Street  
Boston, MA 02110  
617-542-2956/phone  
617-695-2778/fax

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

1. For the purposes of these requests, the following definitions shall apply to the following terms:

- a. "communication" - shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise);
- b. "document" refers to all written or graphic matter (whether prepared by the Hartford Insurance Company or not) however produced or reproduced, in your actual or constructive possession, including documents accessible to you upon your request and/or from your agents, servants, employees, and trustees (actual or constructive), including but not limited to originals (or copies where originals are unavailable) of: correspondence, accounts, microfilm, e-mail, telegrams, notes, minutes of any meetings, memoranda,

inter- or intra-office communications, reports, contracts, agreements, ledgers, books of account, bank passbooks, bank check books, and bank statements, deeds, real estate statements or accounts, bank deposit slips, promissory notes, mortgages. It is further expanded to include any materials stored through magnetic and electronic means (e.g. computer disk, tape, CD, CD-ROM, etc.). It is even further expanded to include photographs, digital images, and video and audio recordings of any kind.

- c. "concern" or any derivative thereof including "relate to" or "pertain to" mean to refer to, relevant to, mentioned, discussed, evidence of, indicate, support, or in any way whatsoever having bearing upon a described subject and shall mean referring to, describing, mentioning, evidencing or constituting.
- d. All requests herein call for ALL DOCUMENTS and other materials as is requested which is in your actual or constructive possession wherever said documents or other materials may be located, whether in your personal possession, at your residence, at any of your business locations or those of your agents, servants, employees, trustees, or relatives, or other location, and regardless of whether such documents pertain to your personal or business affairs and regardless of whether involving you in your individual capacity, as an agent or officer of a business entity of which you are an employee or in which you have an equity or proprietary interest either actual or constructive, or

in which you have a beneficial interest.

- e. For the purposes of this Notice, the term "you" or "your" or any derivative thereof shall mean the Hartford Insurance Company its agents, directors, shareholders, subsidiaries and employees as well as any other names entity under which the Hartford Insurance Company conducts business.
- f. The term "the Hartford" or any derivative thereof shall mean the Hartford Insurance Company, its agents, directors, shareholders, subsidiaries and employees as well as any other names or entities under which the Hartford conducts business.

2. You are required to produce either originals or confirmed copies of each document requested.

3. In the event that a document responsive to any request is claimed to be privileged, each such privileged document should be identified in writing by providing the following information:

- a. the date on which the document was prepared;
- b. the author or authors of said document;
- c. the addressee(s) of the document, if any;
- d. the number of pages;
- e. the location(s) of the document; and
- f. a brief description of the substance thereof sufficient to allow the Court to determine the validity of the privilege claim.

4. If no documents exist in response to a numbered request, please state that no documents exist.

5. Unless specifically indicated otherwise, all documents are requested for the period from January 1, 2001 up to and including the present

time, including any documents having earlier origin and in use during the above-specified time period.

DOCUMENTS AND TANGIBLE THINGS REQUESTED

1. Any and all documentation that concerns or in any way relates to a claim before the Department of Industrial Accidents for the Commonwealth of Massachusetts, DIA Board No. 02147501, Claimant: Heather Kiernan, Employer's Name: Armored Motor Service of America, date of loss or injury May 20, 2001. This request includes, but is not limited to:
  - a. Any correspondence or communication with anyone concerning the facts which gave rise to the claim;
  - b. Any correspondence or communication concerning the Plaintiff, Heather Kiernan;
  - c. Any correspondence or communication concerning the Defendant Francesco Ciambriello in his capacity as a (former) employee of the Defendant Armored Motor Service of America;
  - d. Any and all of documents that constitute the Plaintiff's medical records or that mention, describe or otherwise discuss Plaintiff's medical condition, including but not limited to independent medical examinations and medical document reviews.
  - e. Any and all telephone logs, telephone notes, and other confirming documentation designed to memorialize and document telephonic and other verbal communication that concern or in any way relate to the Plaintiff, Heather Kiernan and/or the facts which give rise to the Plaintiff's claims in this matter, as well as in the aforementioned claim DIA Board No. 02147501.
  - f. Any and all documents, photographs, and visual items which were

obtained through, for or from any investigation into the events alleged to have taken place on May 20, 2001, the subject of which gave rise to the instant litigation, as well as the aforementioned claim DIA Board No. 02147501.

2. Any and all documents that constitute any communication or correspondence with Vigilant Insurance Company, or any entity or person acting on behalf of Vigilant Insurance Company that concern or in any way relate to the Plaintiff, Heather Kiernan and/or the facts which give rise to this lawsuit.
3. Any and all documents that mention, describe, allude to, reference or pertain to any video tape (s) or photograph (s) or other visual and/or audio depiction and/or recording of the events which give rise to this lawsuit.

McLeod Law Offices, P.C.  
77 Franklin Street  
Boston, Massachusetts 02110  
617-542-2956  
617-695-2778 fax

October 13, 2004

Keeper of the Records  
The Hartford Insurance Company  
Hartford, CT 06104

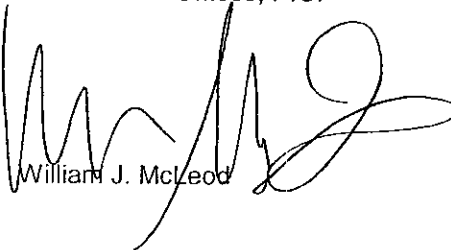
RE: Kiernan v. Armored Motor Service of America, Inc.  
Civil No. 04-10131 RBC

Dear Sir or Madam:

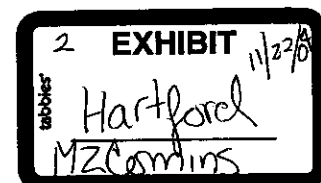
Enclosed is a subpoena directed towards the Company's Keeper of the Records. Upon receipt, please contact me to discuss the disclosure of these documents without the need of any appearance.

Thank you.

Very truly yours,  
McLeod Law Offices, P.C.

  
William J. McLeod

WJM  
Enclosures



# Exhibit B

McLeod Law Offices, P.C.  
77 Franklin Street  
Boston, Massachusetts 02110  
617-542-2956  
617-695-2778 fax

October 13, 2004

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7002 0460 0001 9766 0488

Legal Department  
Division of Insurance  
Commonwealth of Massachusetts  
One South Station  
Boston, MA 02110

RE: Kiernan v. Armored Motor Service of America, Inc.  
Civil No. 04-10131 RBC

Dear Sir or Madam:

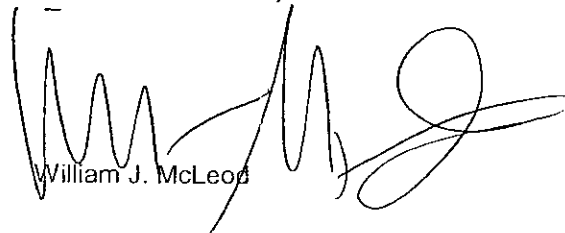
Enclosed for filing and docketing, please find an original and two copies of the following:

-Subpoena and Notice of Deposition (directed to the Hartford Insurance Company).

Also enclosed is a check for \$6.00.

Thank you for your time and attention to this important matter.

Very truly yours,  
McLeod Law Offices, P.C.

  
William J. McLeod

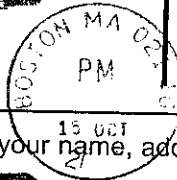
7002 0460 0001 9766 0488

|                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| U.S. Postal Service<br>CERTIFIED MAIL RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided) |    |
| OFFICIAL USE                                                                                          |    |
| Postage                                                                                               | \$ |
| Certified Fee                                                                                         |    |
| Return Receipt Fee<br>(Endorsement Required)                                                          |    |
| Restricted Delivery Fee<br>(Endorsement Required)                                                     |    |
| Total Postage & Fees                                                                                  | \$ |
| Postmark<br>Here                                                                                      |    |
| Sent To                                                                                               |    |
| Street, Apt. No.,<br>or PO Box No.                                                                    |    |
| City, State ZIP+4                                                                                     |    |





UNITED STATES POSTAL SERVICE



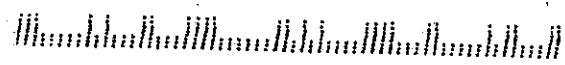
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

**McLeod Law Offices, PC**  
**77 Franklin Street**  
**2nd Floor**  
**Boston, MA 02110**

RECEIVED OCT 18 2004

110+1510  
Kieracn



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Legal Department  
Division of Insurance  
Comm. of Mass  
One South Station  
Boston, MA 02110

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

M

B. Date of Delivery

10-15-04

C. Signature

X

M

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from

7002 0460 0001 9766 0488

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

# Exhibit C



## McLeod Law Offices

A Professional Corporation

77 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-2956  
Fax: (617) 695-2778  
[www.mcleodlawoffices.com](http://www.mcleodlawoffices.com)

### FAX COVER SHEET

TO: LEGAL DEPARTMENT

COMPANY: The Hartford Insurance Company

FAX: 860-547-6343

TELEPHONE NO.: 860-547-5000

DATE: November 19, 2004

Regarding Our Client: Heather Kiernan

PAGES: 11 (Including this cover sheet)

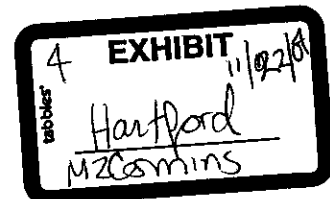
PLEASE NOTE: HARD COPY WILL ( ) WILL NOT ( x ) FOLLOW.

Message:

Please deliver this fax immediately. If this transmission is incomplete or illegible, please call us at the above telephone number.

### NOTICE

The information contained in this communication is confidential, may be attorney-client privileged and is intended solely for the use of the addressee above. Unauthorized use, disclosure or copying is strictly prohibited. If you have received this transmission in error, please notify us immediately by calling us collect at (617) 542-2956. We will arrange for the retrieval of the documents at no cost to you. Thank you.



**McLeod Law Offices, P.C.  
77 Franklin Street  
Boston, Massachusetts 02110  
617-542-2956  
617-695-2778 fax**

November 19, 2004

VIA FACSIMILE

Legal Department  
The Hartford Insurance Company  
690 Asylum Avenue  
Hartford, CT 06115

RE: Kiernan v. Armored Motor Service of America, Inc.  
Civil No. 04-10131 RBC  
US District Court, District of Massachusetts

Dear Sir or Madam:

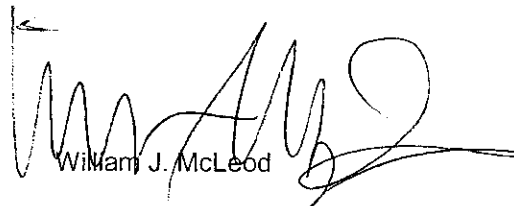
Under cover of October 13, 2004, I served subpoenas in the above matter on the Insurance Commissioner of the Commonwealth. The subpoenas were received by them on October 15, 2004. For your reference, I have attached the subpoenas, along with the other documents that were included with the subpoenas.

To date, I have not heard from The Hartford with regard to these matters.

Upon receipt of this letter and your review of the attachments, please call me to discuss this matter. Because these depositions were scheduled for Monday, November 22, 2004, your prompt attention is appreciated.

Thank you for your time and attention.

Very truly yours,  
McLeod Law Offices, P.C.

  
William J. McLeod

WJM  
Enclosures

McLeod Law Offices, P.C.  
 77 Franklin Street  
 Boston, Massachusetts 02110  
 617-542-2956  
 617-695-2778 fax

October 13, 2004

VIA CERTIFIED MAIL  
 RETURN RECEIPT REQUESTED  
 7002 0460 0001 9766 0488

Legal Department  
 Division of Insurance  
 Commonwealth of Massachusetts  
 One South Station  
 Boston, MA 02110

RE: Kiernan v. Armored Motor Service of America, Inc.  
 Civil No. 04-10131 RBC

Dear Sir or Madam:

Enclosed for filing and docketing, please find an original and two copies of the following:

-Subpoena and Notice of Deposition (directed to the Hartford Insurance Company).

Also enclosed is a check for \$6.00.

Thank you for your time and attention to this important matter.

Very truly yours,  
 McLeod Law Offices, P.C.

02 0460 0001 9766 0488

**COMPLETE THIS SECTION**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Write your name and address on the reverse so we can return the card to you. Attach this card to the back of the mailpiece, with the front of space permits.

Addressed to:

Legal Department  
 Division of Insurance  
 Commonwealth of Mass  
 One South Station  
 Boston, MA 02110

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) M B. Date of Delivery 10-15-04

C. Signature M

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

**3. Service Type**

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

Number (Copy from) 7002 0460 0001 9766 0488

McLeod Law Offices, P.C.  
77 Franklin Street  
Boston, Massachusetts 02110  
617-542-2956  
617-695-2778 fax

October 13, 2004

Keeper of the Records  
The Hartford Insurance Company  
Hartford, CT 06104

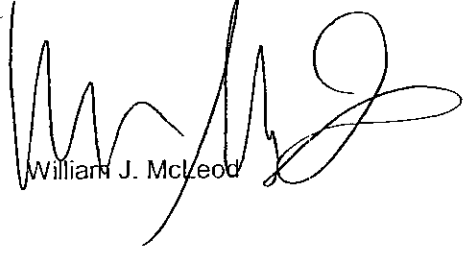
RE: Kiernan v. Armored Motor Service of America, Inc.  
Civil No. 04-10131 RBC

Dear Sir or Madam:

Enclosed is a subpoena directed towards the Company's Keeper of the Records. Upon receipt, please contact me to discuss the disclosure of these documents without the need of any appearance.

Thank you.

Very truly yours,  
McLeod Law Offices, P.C.

  
William J. McLeod

WJM  
Enclosures

# Exhibit D



TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2004 12:38  
NAME : CUTLERMCLEOD PC  
FAX : 16176952778  
TEL : 16176952777  
SER.# : XXXXXXXXXXX

|              |                 |
|--------------|-----------------|
| DATE, TIME   | 11/19 12:37     |
| FAX NO./NAME | 9-18605476343   |
| DURATION     | 00:01:45        |
| PAGE(S)      | 11              |
| RESULT       | OK              |
| MODE         | STANDARD<br>ECM |



77 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-2956  
Fax: (617) 695-2778  
[www.mcleodlawoffices.com](http://www.mcleodlawoffices.com)

**FAX COVER SHEET**

TO: LEGAL DEPARTMENT

COMPANY: The Hartford Insurance Company

**FAX: 860-547-6343**

TELEPHONE NO.: 860-547-5000

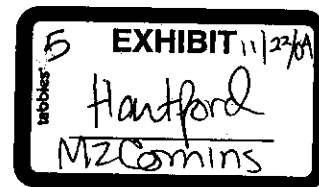
DATE: November 19, 2004

Regarding Our Client: Heather Kiernan

PAGES: 11 (Including this cover sheet)

PLEASE NOTE: HARD COPY WILL ( ) WILL NOT(x) FOLLOW.

Message:



# Exhibit E

Volume: I Pages: 1 to 8

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

HEATHER KIERNAN,

Plaintiff

v.

Civil Action

ARMORED MOTOR SERVICE OF

No. 04-10131

AMERICA, INC. and

RBC

FRANCESCO CIAMBRIELLO,

Defendants

SCHEDULED KEEPER OF THE RECORDS

DEPOSITION of HARTFORD INSURANCE COMPANY

Monday, November 22, 2004

11:12 a.m.

McLeod Law Offices, P.C.

77 Franklin Street

Boston, Massachusetts 02110

Melissa Z. Comins, RPR and CSR No. 132293

Page 2

## APPEARANCES:

McLEOD LAW OFFICES, P.C.  
 By: William J. McLeod, Esq.  
 77 Franklin Street  
 Boston, Massachusetts 02110  
 (617) 542-2956  
 Counsel for the Plaintiff.

Page 4

## PROCEEDINGS

(Exhibits Nos. 1 to 5

marked for identification.)

MR. McLEOD: This is a records deposition of the Hartford Insurance Company. It is now 11:12 a.m. on Monday, November 22. My name is William McLeod appearing for the plaintiff.

I spoke with Laurence Donoghue for defendant, Armored Motor Service of America, Inc. this morning and I informed him that I did not anticipate that the Hartford Insurance Company was going to appear for this deposition.

I also, on November 19, 2004, at 5:30 p.m., I left a message with Attorney David Ardito, A-R-D-I-T-O, representing the defendant, Francesco Ciambriello, telling him that I did not believe the Hartford was going to appear for the deposition which was noticed for Monday, November 22, 2004.

Exhibit 1 has been marked. It is a copy of a subpoena that was sent to the Hartford Insurance Company care of its agent for process, which, by statute, is the commissioner of

Page 3

## INDEX

| No.                                                            | Page |
|----------------------------------------------------------------|------|
| 1 Subpoena, notice and schedule A.....                         | 4    |
| 2 Letter dated 10/13/04.....                                   | 4    |
| 3 Certified letter dated 10/13/04.....                         | 4    |
| 4 Fax cover sheet and letters dated 10/13/04 and 11/19/04..... | 4    |
| 5 Fax cover sheet dated 11/19/04.....                          | 4    |

(Original exhibits copied and attached.)

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insurance for the Commonwealth of Massachusetts, One South Station, Boston, Massachusetts, 02110.

Attached to that subpoena was a notice of deposition dated October 13, 2004, which is a six-page document, that was attached to the subpoena.

In addition to that was a letter dated October 13, 2004, which has been marked as Exhibit 2, directed to the keeper of the records for the Hartford Insurance Company.

Those documents were then sent with a letter dated October 13, 2004 via certified mail to the legal department at the division of insurance for the Commonwealth.

That letter has been marked as Exhibit 3. Attached to that exhibit is a copy of the return receipt which reflects that on October 15, 2004, the division of insurance received a subpoena, the notice of deposition and both letters dated October 13, 2004.

On November 19, 2004 at 2:48 p.m., I spoke with Stacey Keegan at the division of insurance. She confirmed that the subpoena was received on October 15, 2004, and that on

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1 October 18, 2004, the commissioner forwarded the  
 2 subpoena to the Hartford Insurance Company care of  
 3 CT Corporation Systems, 101 Federal Street,  
 4 suite 300, Boston, Massachusetts, 02110.

5 Also on Friday, November 19, 2004, I  
 6 contacted the Hartford Insurance Company and  
 7 obtained the fax number for their legal department.

8 I sent them a fax of -- of the  
 9 subpoena, the notice of deposition, my letter as  
 10 well as a letter dated November 19, 2004 as well as  
 11 a copy of the letter to the commissioner of  
 12 insurance dated October 13, 2004 as well as my  
 13 letter to the keeper of the records dated  
 14 October 13, 2004.

15 This has been marked as Exhibit 4 and  
 16 it is four pages. Exhibit 5 is a fax transmission  
 17 verification report confirming that on November 19  
 18 at approximately 12:37 p.m., eleven pages were sent  
 19 and received to the legal department of the Hartford  
 20 insurance company at (860) 547-6343.

21 It being 11:15, the deposition  
 22 scheduled for 10:00, it is apparent that the witness  
 23 is not going to appear; therefore, plaintiff will  
 24 seek to enforce the subpoena through court order.

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1 Commonwealth of Massachusetts  
 2 Suffolk, ss.

3  
 4 I, Melissa Z. Comins, Certified Shorthand  
 5 Reporter No. 132293 and Registered Professional  
 6 Reporter and Notary Public in and for the  
 7 Commonwealth of Massachusetts, do hereby certify  
 8 that the statements hereinbefore set forth are a  
 9 true record of the statements made by the parties  
 10 present.

11 I further certify that I am neither related to  
 12 or employed by any of the parties in or counsel to  
 13 this action, nor am I financially interested in the  
 14 outcome of this action.

15 In witness whereof, I have hereunto set my hand  
 16 and seal this 7th day of December 2004.

17  
 18  
 19  
 20 Notary Public  
 21 CSR # 132293

22 My commission expires:  
 23 June 13, 2008  
 24

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1 (Whereupon the deposition  
 2 suspended at 11:19 a.m.)  
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